



WORKER RIGHTS CONSORTIUM

Case Summary: Quality / Elderwear (El Salvador) December 19, 2006

In response to a complaint from workers in late August 2006, the WRC undertook an inquiry into alleged worker rights violations at a factory known as Quality, located in Soyapango, El Salvador. The factory was closed in August of this year and production was relocated to a different region of El Salvador. At the time of the closure, Quality employed roughly 340 workers. Both Quality and a new factory to which production was shifted after the closure are wholly owned by Elderwear School Clothing Company (hereafter referred to as "Elderwear") and produce school uniform products for Elderwear under the labels Tom Sawyer, Mark Twain, Becky Thatcher, and School Days, among others. Although Elderwear is not involved in the production of university logo goods, the WRC made the decision to pursue the complaint in part because we believed the increasing prevalence of codes of conduct at primary and secondary schools, as well as the recent affiliation with the WRC by a group of Catholic high schools in Ontario, Canada, meant it was likely that Elderwear would be responsive to our efforts to address labor standards violations.

The alleged violations were related to the closure of the Quality factory, which was announced to workers on August 18. The primary issue of concern identified in the complaint was the alleged refusal on the part of Quality management to pay legally mandated terminal compensation to workers upon the closure of the factory. The complaint also alleged that supervisors made threats to workers who joined a recently established trade union in the factory and that the closure of the factory was motivated by anti-union animus, both of which, if true, would constitute violations of workers' associational rights under Salvadoran law and applicable codes of conduct.

With regard to the payment of severance benefits, the company argued that it was not obligated to pay terminal compensation as required by law because it was simply relocating the business rather than closing the factory entirely. As mentioned above, Elderwear was opening a new facility, known as Tom Sawyer, in a town called Santa Ana on the outskirts of San Salvador. Management explained that Quality workers were welcome to work in the new plant and that those who chose not to were, in effect, resigning, not being laid off and therefore not entitled to severance pay.

The WRC inquiry into the situation determined, however, that employment in the Tom Sawyer plant was not, in fact, a viable option for most workers concerned. The town of Santa Ana is located between one and one half to two hours by bus from the Quality factory in Soyapango. The Elderwear company offered to provide buses leaving from the

Quality plant in the morning and returning to the same location at night. However, because many workers had commuted substantial distances to the Quality factory via bus – including many from the opposite direction of the new facility – and because the latest available buses home left Soyapango before the company buses from Santa Ana would arrive at the site of the old factory, it would not be feasible for many workers to get to and from work at the new plant, even if they were willing to accept the daily commute of between three and a half and five hours that would be required. Some workers were ultimately able to relocate closer to Santa Ana, but a great many were not. In light of this reality, the WRC found dismissals caused by the closure of the Quality factory (e.g. for those workers who chose not to relocate) to be effectively forced terminations without just cause, not voluntary resignations as the company argued. We recommended that the company offer to pay severance as appropriate under Salvadoran law in the case of terminations without just cause to those workers who were not able to relocate to the new plant.

In addition to the issue of severance payments, the WRC found that Quality had violated workers' associational rights by denying employment opportunities at the new facility to workers who protested Quality's closure. Specifically, workers testified that Quality and Tom Sawyer management indicated to the workforce that employees who had protested the factory's closure and failure to make severance payments would be considered to have resigned and therefore had forfeited the opportunity to accept positions at the new facility – a policy that effectively amounted to blacklisting workers for protesting the company's illegal failure to pay terminal compensation. In response, we recommended that the company provide transportation to all workers who did wish to relocate to the new plant – regardless of whether they had participated in protest activities – and to employ all of those workers who were able to relocate to the new plant at their previous job status, without the loss of seniority.

With respect to the question of whether the factory closure was motivated by anti-union animus, a firm conclusion was elusive. On the one hand, the timing of the factory closure relative to a decision by workers to associate with a union (which had been established in the factory several weeks before the closure), coupled with comments of a threatening nature regarding unionization made by the facility's production manager and other supervisory personnel prior to the closure, supported the conclusion that the closure was motivated, fully or in part, by anti-union animus. On the other hand, Elderwear officials argued with some credibility that the decision to close the factory was in response to business issues related to El Salvador's export trade rules and to a fire that occurred at the facility in early May. Ultimately, the WRC was not able to determine conclusively whether or not anti-union animus was a factor in the decision to close the Quality factory and lay off the workforce. However, we did recommend that the company take steps to demonstrate its commitment to recognize and deal in good faith with the workers' trade union and, in particular, ensure that elected leaders of the trade union be offered employment at the new facility without discrimination if they chose to relocate.

After initially refusing to adhere to each of the recommendations outlined above, representatives of Quality and Elderwear ultimately began a process of negotiation with worker representatives.

With respect to the payment of severance, the negotiation process yielded a compromise decision in which Elderwear agreed to pay 75% of the severance owed to the workers under typical circumstances and 100% of severance for pregnant workers. The package amounted to roughly \$375,000 for the approximately 350 workers combined – about \$1,070 per worker. While the compromise reached was short of what workers were lawfully owed, the resolution was considered by worker representatives and other observers to be a generally positive outcome to the situation, particularly in the context of the Salvadoran apparel industry in which fly-by-night closures all too frequently deprive workers of all of the severance compensation they are due.

On the issue of access to the new factory for those able to relocate, Elderwear also ultimately agreed to provide job opportunities and bus transportation to all interested workers – including those who had protested the circumstances surrounding the closure – under previous employment status, as long as positions in the factory remained available. The WRC will continue to monitor the situation to determine whether all former Quality workers who choose to do so are able to access positions at the new facility.

Finally, with respect to the issue of freedom of association, the company ultimately chose to pay out the remaining months of the employment contracts for each of the workers on the union's nine-member founding board in exchange for an agreement by these workers not to pursue employment at the new facility. While the company's position may be permissible under Salvadoran law, it represents a clear violation of applicable codes of conduct, which dictate that employers may not use payment of severance or other financial inducements to rid the workplace of trade union members or limit trade union activity. The workers nonetheless chose to accept the proposal. The manner in which this issue was resolved serves as an example of the economic power employers can often wield for the purpose of discouraging the exercise of associational rights by their employees.